he knew of no case in which an acquittal had been quashed by *certiorari* except where there was a defect apparent on the face of the record and added that the Supreme Court ought not to interfere where the adjudicating tribunal was apparently competent — but only where the tribunal was of obviously incompetent jurisdiction or was exercising a jurisdiction manifestly in excess of its powers. In *R.* v. *Marsham,* ([1912] 2 K.B. 362) also while the Court agreed that a plea of *autrefois convict* had been, in the circumstances of that case, properly rejected, Lord Alverstone C.J. said that "if the defendant had been acquitted on the first hearing very different considerations would arise."

So far as there is a discretion in this Court to review or not to review proceedings under section 312A of the Code that discretion clearly ought not, in the circumstances of this case, to be exercised in favour of the prosecution. The Crown was free to charge the accused as it pleased and it chose to charge him on a charge sheet which illegally joined this charge with others; when the point was taken by the defence it opposed the submission and persuaded the learned District Judge to overrule it; when it afterwards admitted the error it chose to adopt procedure which invited the learned Judge to exercise a discretion in discharging or acquitting; when he in fact acquitted, the Crown made no protest and subsequently neither appealed as it has power to do under section 293 of his Code nor applied to this Court for revision but preferred to proceed in a manner which again was erroneous. This Court should certainly not go out of its way to give the prosecution yet another chance to brush aside all the errors it has made in procedure and thereby put the accused for a third time on his trial.

[266] [266] It is not desirable or possible to lay down hard and fast rules as to when this Court will or will not exercise its powers of revision under section 312A of the Code. Each case must be decided according to its own circumstances. It may, however, be laid down as a broad and general rule that where a party to criminal proceedings has had the opportunity to appeal under section 293 or section 295 of the Code but neglects, without very good reasons, so to do he will not be allowed to invoke the provisions of section 312A and, moreover, that where it is proper that application be made to the Court to exercise its powers under that section the application should be made at the first possible moment and not merely as a forlorn hope after other methods of procedure have been unsuccessfully adopted.

In all these circumstances we refused the application that we should exercise our powers under sections 312A and 312C and the appellant was therefore finally discharged.

Appeal allowed.

In re A CONTRACT BETWEEN WEE POH NEO AND GOONA VEERAGOO NAIDOO

[O.C.J. (Adrian Clark J.) September 4, 1936]
[Singapore Originating Summons No. 121 of 1936]

Trustees Ordinance, s.15, sub-s.2 — Sole trustee — Valid receipt for capital moneys arising under trust for sale of land — Position of purchaser from executor.

The powers under which an executor sells for the purpose of paying debts &c., do not constitute "an immediate binding trust for sale" within the meaning of the Trustees Ordinance.

If a sale is effected to produce funds to pay funeral or testamentary expenses or the debts of the deceased, then a single executor may give a valid receipt. If the proceeds of sale are to be employed as capital moneys impressed with the objects of the trust then they must be paid to no less than two trustees and no receipt given by only one trustee will be a good discharge to a purchaser.

If a single executor purports in selling to be acting as such and to be selling for the purpose of paying the testator's debts or his funeral expenses, the purchaser is not put further on enquiry and is safe if he has no notice that the vendor's representations are untrue, at any rate during a period of six years after the testator's death.

Re Tambi bin Osman, (1929) S.S.L.R. 186 considered and followed.

VENDOR AND PURCHASER'S SUMMONS.

K. T. Ooi for the vendor (executor).

Laycock for the purchaser.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: This is a vendor and purchaser's summons taken out under the provisions of section 4 of the Conveyancing and Law of Property Ordinance.

The facts have been set out in a statement of agreed facts which was filed in the matter and which may be taken to be incorporated in this judgment as introductory matter.

The declarations asked for in the summons are "that the requisition and objection in respect of the ability of the said Wee Poh Neo to give a valid receipt for the proceeds of sale of the land and premises comprised in the abovementioned contract of sale have been sufficiently answered by the applicant the vendor" and "that a good title to the said land and premises has been shown in accordance with the particulars and conditions of sale contained in the abovementioned contract."

An executor has always been regarded by the Courts of Equity as holding the property of the deceased in a fiduciary capacity and as being in effect a trustee.

The primary duty of the executor is to realise so much of the assets of the deceased as will pay the debts and funeral and testamentary expenses of that deceased. Thereafter he holds the property in trust for the beneficiaries under the will.

For the purposes of the Trustees Ordinance that Ordinance expressly provides, in section 2(1), that an executorship shall be included, except where otherwise provided, in the application of the provisions of that Ordinance to trusts. Section 3 of the Ordinance, again, defines the word "trust" as including in that Ordinance (unless the context otherwise requires) "the duties incident to the office of a personal representative," and "trustee" as including a personal representative.

Now section 15 of that Ordinance, as originally enacted, provided by subsection (1) that a trustee might give, for any money payable to him under any

trust or power, a receipt which would be a valid discharge to the person paying and that the person was thereby exonerated from seeing to the application of that money.

Subsection (2) of the section engrafted an exception to the general rule laid down in subsection (1) by providing that (except in the case of a trust corporation) a sole trustee could not give a valid receipt for the "proceeds of sale or other capital money" arising under a trust for sale.

Subsection (3) provided that the section should apply notwithstanding anything to the contrary in the instrument, if any, creating the trust.

Now in 1935 by the Statute Law Revision Ordinance of that year an additional subsection was inserted [267] in section 15 of the Trustees [267] Ordinance and was numbered subsection 2A. This, I understand, was done at the request of the Bar Committees of Penang and Singapore and the new subsection appears to have been borrowed integrally from section 27(2) of the Law of Property Act, 1925.

The English section forms an integral part of the series of Property Acts passed in 1925 including such provisions as that of section 35 of the Administration of Estates Act.

I am not clear as to the utility or advisability of incorporating into our legislation in this way one little piece of a codification of other laws nor am I clear as to the exact reason for its incorporation in our Ordinance in the manner in which it was incorporated, since the new subsection appears in large measure merely to repeat what was already contained in our section as it stood.

A "trust for sale" referred to in subsections (2) and (2A) of section 15 is defined in section 3 of the Ordinance as meaning in relation to land an "immediate binding trust for sale" and "trustee for sale" as including a personal representative holding land on trust for sale.

The powers under which an executor sells for the purposes of paying debts, etc., do not constitute an "immediate binding trust for sale." (*Re Estate of Tambi bin Osman, supra*).

Now the first observation I have to make on these provisions, read together, is that the expressions "sole trustee" and "sole personal representative" should not in my view ordinarily be used as meaning or including one trustee surviving out of several or one executor who alone, out of two or more nominated by the testator, has proved the will. "Sole trustee" and "sole personal representative" should ordinarily be taken to indicate only a person in respect of whom the settlor or testator has expressed the wish that he shall alone carry out the trust imposed upon the property in question.

I think, however, that the use of the word "sole" in the Ordinance must, in order to give effect to the intention of the legislature, be construed as including a surviving trustee who has power to act or one of several executors who alone has proved.

What then is the effect of the section? I think it is that no single trustee (including in that term an executor who alone has proved) can receive monies which arise under a trust for sale and which then constitute capital monies for the purposes of the trust.

If the sale is effected in order to produce funds with which to pay funeral or testamentary expenses or the debts of the deceased then a single executor may give a valid receipt.

If the proceeds of the sale are themselves to be employed as capital money impressed with the objects of the trust then those monies must not be paid to less than two trustees and no receipt given by only one trustee will be a good discharge to the purchaser.

In this case the wording of the will is as follows:—

"1. I appoint my wife Wee Poh Neo and my son Yeo Hai Sun as and when my said son attains the age of twenty-one years (hereinafter called 'my trustees' which expression shall where the context permits mean and include the trustees or trustee for the time being hereof whether original or substituted) to be the executrix and executor and trustees of this my will.

2. I direct my trustees to spend such sum as they may think fit for my funeral expenses.

3. Subject to the payment of my just debts, funeral and testamentary expenses, I give devise and bequeath all my property both real and personal of whatsoever nature and wheresoever situate unto my trustees upon trust to sell....." (Then follow words creating, in my view, an immediate binding trust for sale).

Although at first sight it might appear that the ordinary duties of executors are included in the trust itself I think the true view is that the word "trustees" is merely descriptive and includes "executors," that the executors are to carry out first their duties as executors, and that it is only afterwards that the residue of the testator's property is to be applied for the purposes of the trust.

In any case the sale of any part of the testator's property in order to pay funeral and testamentary expenses and debts would not produce "capital money" under the trust and could be properly considered as the exercise of the duties of executors rather than of trustees under the trust.

What then is the position of the purchaser?

He calls for a probate copy of the will to ascertain its provisions in respect of the property to be sold. He ascertains that probate has been registered in respect of the property in the Registry of Deeds but this tells him very little.

The purchaser is not put further on enquiry. The Ordinance exonerates the purchaser from seeing to the application of the purchase money, and as Warrington L.J. said in *In re Kemnal and Still's Contract*, [1923] 1 Ch. at p. 310: — "It is well settled that no purchaser is liable to have his title called in question unless he has actual notice of the impropriety of the transaction."

[268] If, therefore, a single executor purports, [268] in selling to be acting as such and to be selling for the purpose of paying the testator's debts or his funeral and testamentary expenses, the purchaser is safe if he has no notice that the vendor's representatioins are untrue.

The result may be largely to vitiate the object of the legislature. An executor remains an executor indefinitely, even though he be also nominated under the will to be a trustee of trusts created by that will. A dishonest person who is both executor and trustee under the will, by falsely alleging to an innocent purchaser that he is selling *qua* executor, may therefore be enabled, at any rate during a period of six years after the testator's death, to sell all the trust property and to pocket the proceeds unimpeded by any necessity of abetment by a second trustee.

That, however, is the law as I understand it.

In the present case I was informed that the purchaser was satisfied that the sale was in fact being made in order to provide for the payment of funeral and testamentary expenses and debts.

I therefore make the declarations and the order as to costs prayed for by the vendor.

Order accordingly.

Solicitors: *Wee Swee Teow & Co.; Braddell Bros.*

IN THE MATTER OF RICHARD CHUAN HOE LIM

[O.C.J. (Adrian Clark J.) October 20, 1936]
[Singapore Admission of Advocates and Solicitors No. 2 of 1936]

Advocates and Solicitors Ordinance (Cap. 62), s.5, sub-s.5.

Applications to shorten period of posting of notices and to shorten period during which petitioner is required to attend and receive instruction in a practitioner's office in the Colony. Active practice in any part of His Majesty's dominions may be a special ground in shortening or even dispensing with these periods. Observations on special grounds.

PETITION.

Laycock for the petitioner.

Worley (Solicitor-General) for the Attorney-General.

Withers Payne for the Singapore and Penang Bar Committees.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: This petition under the Advocates and Solicitors Ordinance prays the Court to—

(1) shorten the period during which the notice referred to in subsection 2 of section 5 of the Advocates and Solicitors Ordinance is required to be posted;

(2) shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Colony of a practising advocate and solicitor of not less than seven years' standing in the Colony; and

(3) admit and enrol the petitioner forthwith as an advocate and solicitor of this Honourable Court.

The first two prayers can only be acceded to under section 5(5) of the Ordinance, that is to say "on special grounds."

The special grounds in this case are said to be two, namely that the petitioner has been in active practice as a barrister in Hong Kong for the past five years and also that the firm with which he is now working will, if he is not immediately admitted, find it almost impossible to cope with its work, since one of the partners in that firm is about to go to England on long leave.

The petition is opposed by the Bar Committees of Singapore and of Penang both of whom have been represented in these proceedings by Dr. Withers Payne.

Dr. Withers Payne first cited the case of *Re Niblett*, S.L.R. (N.S.) 58 which is referred to at p. 72 of Van Someren but that case was decided at a time when the subsection corresponding to what is now section 5(5) was differently worded. The Legislature has since then intimated, in an amendment to that subsection, that active practice in any part of His Majesty's dominions may be a special ground justifying this Court in shortening or even in dispensing with the periods of time referred to in subsections (2) and (3) of section 5.

I do, however, agree that the mere fact that a partner in a firm has elected to go on leave at some particular time cannot of itself be good ground for dispensing with the requirements of the section.

The main objection of the Bar Committee is that the petitioner has not had sufficient time in which to gain local experience and, especially, experience in those aspects of legal work with which the petitioner's previous practice has not familiarised him. In the present case the petitioner had, until his arrival in this Colony, practised purely as a barrister and had also had no experience of conveyancing.

This Court should always, I think, without abdicating its own functions as final arbiter in the matter, pay great attention to any objection raised by a Bar Committee since such an objection may be assumed to be based on the experi- [269] ence of its members of what is desirable in the interests of the public and of the legal profession; and, in this case the Bar Committee are unanimous in their objection. It is true that the committee appointed under section 7 of the Ordinance have certified that the petitioner "has an adequate knowledge of the practice and etiquette of the profession and of the English language and is a suitable person for admission." The existence of this certificate on the record at first gave me pause. I cannot accept the suggestion of the learned Solicitor-General that the primary object of the interview required under this section is to ascertain whether the petitioner has sufficient command of the English tongue; I must assume that the Legislature meant what it has said, and the requirement that the petitioner should have "an adequate knowledge of the practice and etiquette of the profession" is a requirement which goes very much further; while the further requirement that he should be "a suitable person for admission" must mean that the candidate should, at the moment the certificate is signed, be in every way a fit and proper person to practise in this Colony as an advocate and solicitor of this Court. I do not think that, in future, the committee appointed under section 7 of the Ordinance should give an unqualified certificate if, in their opinion, a candidate requires further local experience before he undertakes the responsibility of advising or otherwise acting professionally for clients, for reward, as an officer of this Court.

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